IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1097 OF 1998

Oriental Bank of Commerce ...Plaintiffs

Versus

Manish Gulabbhai Shah & Anr. ...Defendants

Ms Priya Ranade i/by Kadwani & Co for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 08, 2007.

ORAL JUDGMENT:

1. The suit is placed under the caption of "Undefended Suits for Exparte Decree".

2. The Plaintiffs have tendered on record affidavit in lieu of evidence of Mr.Winston Xavier Naronha, Senior Branch Manager and constituted attorney of the Plaintiffs. The said affidavit is marked "X" for identification and is taken on record. Alongwith the affidavit the learned counsel for the Plaintiff has tendered on record certain documents alongwith a list. The documents alongwith list are marked "Y" (collectively) for identification.

3. According to the case of the Plaintiffs, on the request made by the first Defendant, in February 1993 they granted to the first Defendant packing credit facility, with a limit of Rs.4 lakhs. By way of security for repayment of the amount repayable under the

said facility the first Defendant executed a demand promissory note dated 17th February, 1973 in favour of the Plaintiff. The first Defendant also executed a letter of continuing security dated 17th February, 1993, and an instrument of hypothecation of the goods of the same date and letter of sole proprietorship of the same date. The second Defendant guaranteed due repayment of the amount payable by the first Defendant by executing an Irrevocable Continuing General Form of Guarantee dated 17th February, 1973 for aggregate sum of Rs.6 lakhs.

4. Against an export order dated 03rd December, 1994 for US $ 25632 during 22nd July, 1994 to 16th August, 1994, the Plaintiffs granted to the first Defendant a packing credit for an aggregate sum of Rs.3,97,000/-.

5. According to the case of the Plaintiffs the facility was availed of and utilised by the first Defendant. According to the case of the Plaintiffs, by letter dated 09th February, 1996 the Plaintiffs informed the Defendants that a sum of Rs.4,05,590/- was due and payable by the first Defendant under the packing crediting facility. The Defendants by their letter dated 09th February, 1996 written on the reverse of the letter dated 09th February, 1996 sent by the Plaintiffs admitted and confirmed their indebtedness to the

Plaintiffs for the said amount.

6. According to the case of the Plaintiffs the first Defendant committed defaults and several breaches. By advocate's letter dated 17th December, 1997 the Plaintiffs called upon the first Defendant to pay the amount due and payable in respect of the said facility. By advocates letter dated 13th January, 1998 the Plaintiffs also called upon the second Defendant to pay the said amount due and payable by the first Defendant. The claim in the suit is in the sum of Rs.7,73,73.68/- as per the particulars of the claim with interest at the rate of 20.5% per annum with quarterly rests from the date of the suit till date of the payment till realisation.

7. By the affidavit of Mr.Naronha the execution of the documents referred to above have been proved. The Plaintiffs have also produced alongwith the list of documents (marked as Y) an extract of account of the first Defendant which is duly certified in accordance with provisions of the Bankers' Book Evidence Act, 1891. The said extract has been duly proved by the affidavit of Mr.Naronha. The Plaintiffs have also placed on record office copies of the Advocate's notices addressed by the Plaintiffs to the Defendants. The letter dated 09th February, 1996 written by the Defendants referred to earlier is also duly proved.

8. There is no contest by the Defendant by filing written statement. During the pendency of the suit, the Court Receiver, High Court, Mumbai was appointed as the receiver of hypothecated goods. The learned counsel for the Plaintiff states that the Court Receiver has not recovered any amount by sale of the hypothecated goods or any other property of the Defendants.

9. Considering the facts and circumstances of the case, interest under section 34 of the Code of Civil Procedure, 1908 will have to be granted at the rate of 18% per annum.

10. Hence, the suit is decreed in terms of prayer clauses (a) and (b) with modification that the interest payable will be at the rate of 18% per annum from the date of the suit till payment or realisation. It is clarified that the liability of the second Defendant will be restricted to the amount mentioned in the Deed of Guarantee dated 17th February, 1993. The Plaintiffs will be also entitled to costs of the suit from Defendants.

11. The Plaintiffs will be entitled to refund of court fees, if any, as per rules.

12. Certified copy is expedited.

JUDGE